

REMARKS

Claims 1-7 and 10-22 remain pending after amendment.

Claim Amendments

By this amendment, claims 8 and 9 are cancelled. Various editorial revisions are made in claims 1-7. The claims are also amended to state that the R group represents an alkyl group having 5 to 20 carbon atoms, an alkenyl group having 2 to 22 carbon atoms and an alkyl phenyl group having 7 to 22 carbon atoms consistent with the disclosure at page 6 of the specification. New claims 10-22 are added. The amount of water present is disclosed at page 9 of the specification. No new matter is added by this amendment.

Rejection under 35 USC 101

Claim 9 stands rejected under 35 USC 101 as being directed to non-statutory subject matter. In response, claim 9 is cancelled. The rejection is thus moot and should be withdrawn.

Rejection under 35 USC 112 (paragraph two)

Claim 1 stands rejected under 35 USC 112 (paragraph two) as not distinctly claiming the invention. In response, claim 1 is amended to insert a definition for the R substituent for compound (II). The rejection is thus moot and should be withdrawn.

Rejection under 35 USC 102(b)

Claims 1-8 stand rejected under 35 USC 102(b) as being anticipated by U.S. Patent No. 5,928,418. This rejection respectfully is traversed to the extent deemed to apply to the claims as amended.

In support of the rejection, the Examiner directs applicants' attention to the Examples of the reference which teach the addition of methyl gallate to an asphalt composition.

In response, the claims are amended to state that the R group represents an alkyl group having 5 to 20 carbon atoms, an alkenyl group having 2 to 22 carbon atoms or an alkyl phenyl group having 7 to 22 carbon atoms. Such substituents are neither disclosed nor suggested by the reference. Indeed, the only R group taught by the reference is a methyl group (i.e., methyl gallate).

Further, applicants' invention, comprised of either components (I) or (II), or a mixture thereof, is demonstrated to be highly compatible with heated asphalt, while forming an admixture which is not an emulsion. This is in contrast to the composition of the cited reference wherein an asphalt emulsion is formed by combining an additive in water with asphalt to form an emulsified product.

It is clear from a review of U.S. Patent No. 5,928,418 that the reference is directed to an "asphalt emulsion" comprising water, asphalt, an emulsifier, a polyphenolic compound, at least one member selected from anionic polymeric dispersants,

hydroxycarboxylic acids and/or at least one member selected from saccharides, sugar alcohols and polyhydric alcohols. See column 22, lines 9-25 of the reference in this regard.

While the reference teaches the presence of a gallic acid derivative such as methyl gallate, the reference fails to disclose or suggest the use of gallic acid derivatives of the type now defined as component (I) of applicants' claim 1. The reference also fails to disclose or suggest the combination of constituents defined as component (II) in applicants' claim 1 – nor does the reference disclose or suggest the combination of components (I) and (II) in an asphalt composition. Again, the reference directs its teachings to the formation of an asphalt emulsion, which is not applicants' intent as made clear by presentation of the newly-presented claims which provide for the presence of limited amounts of water in the asphalt composition.

In view of the above, taken together with applicants' amended claims, the rejection is without basis and should be withdrawn.

The application is now believed to be in condition for allowance. An early indication of same earnestly is solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John W. Bailey at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

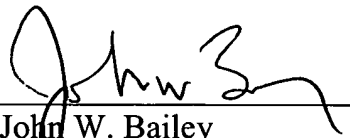
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: **JAN - 5 2006**

JW

Respectfully submitted,

By



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